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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 SHAWN CHRISTOPHER ALLS, )  
12 Petitioner, )  
13 vs. )  
14 OCHOA, Warden, )  
15 Respondent. )  
16

CASE NO. CV 11-4390 R (RZ)

ORDER SUMMARILY DISMISSING  
PAROLE HABEAS ACTION  
PURSUANT TO *SWARTHOUT V.*  
*COOKE*

17 Rule 4 of the Rules Governing Section 2254 Cases in the United States  
18 District Courts provides in part that “[i]f it plainly appears from the face of the petition and  
19 any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the  
20 judge shall make an order for its summary dismissal and cause the petitioner to be  
21 notified.” Because a recent Supreme Court ruling plainly forecloses Petitioner’s habeas  
22 challenge to his ongoing denial of parole, the Court will dismiss the action summarily.  
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24 **I.**

25 **BACKGROUND**

26 In 1990, a Los Angeles County Superior Court jury convicted Petitioner  
27 Shawn Christopher Alls of attempted murder and conspiracy to commit murder. Petitioner  
28 was sentenced to 25 years to life in prison for his participation in the crimes. On February

1 5, 2009, the Board of Parole Hearings denied Petitioner parole for at least three further  
2 years. *See generally* unmarked Ex. to Pet. (hearing transcript). In 2010, Petitioner filed  
3 a habeas action in this Court to challenge that denial, contending that not even “some  
4 evidence” supported it. The Court agreed and, following then-prevailing Ninth Circuit  
5 doctrine, granted relief (in the form of a required new parole hearing). *See*  
6 *generally* docket in *Alls v. Salazar*, No. CV 10-00718 R (RZ).

7 The Supreme Court’s recent decision in *Swarthout v. Cooke*, No. 10-333, 562  
8 U.S. \_\_\_, \_\_ S. Ct. \_\_\_, 2011 WL 197627 (Jan. 24, 2011) (*Cooke*), however, reversed key  
9 Ninth Circuit rulings upon which this Court had relied. *Cooke* held that the Ninth Circuit’s  
10 test for “some evidence” supporting a parole denial is a state, not federal, requirement and  
11 that “the responsibility for assuring that the constitutionally adequate procedures governing  
12 California’s parole system are properly applied rests with California courts, and is no part  
13 of the Ninth Circuit’s business.” The federal habeas court’s inquiry – in cases, such as this  
14 one, in which a prisoner seeks habeas relief based on an alleged violation of the federal  
15 Due Process Clause – is limited to determining whether the prisoner “was allowed an  
16 opportunity to be heard and was provided a statement of the reasons why parole was  
17 denied.” *Id.*, citing *Greenholtz v. Inmates of Neb. Penal and Correctional Complex*, 442  
18 U.S. 1, 16, 99 S. Ct. 2100, 60 L. Ed. 2d 668 (1979).

19 Based on *Cooke*, this Court granted Respondent’s motion to stay the Judgment  
20 granting habeas relief pending appeal. On appeal, the Ninth Circuit promptly reversed the  
21 grant on April 20, 2011, also based on *Cooke*. *See generally* docket in *Alls v. Salazar*, No.  
22 11-55097 (9th Cir.).

## 23

## 24 II.

## 25 THE CURRENT PETITION

26 In the current Petition, Petitioner’s essential claim is that (1) he has  
27 “programmed” just as he was directed to do in the 2009 hearing, by doing such things as  
28 obeying rules and demonstrating remorse, yet (2) he has not been granted parole. More

1 specifically, he complains that he has not been given an *accelerated hearing* for parole,  
2 after having been given a three-year denial last time. He again cites “due process,”  
3 presumably meaning the Due Process Clause of the Fourteenth Amendment.

4 *Cooke* forecloses habeas relief on the current petition at least as clearly as on  
5 the prior one. In 2009, Petitioner appeared at a noticed hearing and was given an  
6 opportunity to be heard as well as an explanation of the reasons for denial of parole. *Cooke*  
7 held that federal due-process concerns require no more. As to Petitioner’s complaints  
8 about what has happened since – namely that he has programmed exactly as he was told  
9 and yet has not been given an earlier hearing for his next parole consideration – he cites no  
10 Supreme Court authority whatsoever for such accelerated-hearing relief based even on state  
11 law, let alone on federal law.

### 12 13 **III.**

#### 14 **RECOMMENDATION**

15 For the foregoing reasons, the Court DISMISSES the action with prejudice.

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17 DATED: June 3, 2011



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MANUEL L. REAL  
21 UNITED STATES DISTRICT JUDGE  
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